

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL PRESCRIPTION
OPIATE LITIGATION

MDL NO. 2804

Case No. 17-md-2804

THIS DOCUMENT RELATES TO:

Judge Dan Aaron Polster

*Jennifer Artz, et al. v. Endo Health Solutions
Inc., et al.*, Case No. 1:19-OP-45459

*Michelle Frost, et al. v. Endo Health Solutions
Inc., et al.*, Case No. 1:18-OP-46327

Salmons v. Purdue Pharma L.P., et al.,
Case No. 1:18-OP-45268

**ASSERTIO THERAPEUTICS, INC. (f/k/a DEPOMED, INC.)’S SURREPLY IN
OPPOSITION TO NAS PLAINTIFFS’ MOTION FOR CLASS CERTIFICATION**

In their reply in support of their motion for class certification (the “Reply”), Plaintiffs note that Michelle Frost has withdrawn her request to be appointed as a class representative in the NAS lawsuits. Doc. 3555 at 2, n.4. The significance of this development as to Assertio cannot be understated. Frost was the only proposed NAS class representative with a child who was born after July 2013 when Assertio first entered the opioid market. Because *all* of the children of the remaining proposed NAS class representatives (the “NAS Children”) were born *before* Assertio entered the opioid market, it is now clearer than ever that none of proposed representatives can establish that their alleged injuries are traceable to any actions taken by Assertio. *See* Doc. 3522 at 3.

Plaintiffs’ only response to the merits of Assertio’s argument is a cursory footnote, in which they blithely ask the Court to overlook the proposed class representatives’ lack of standing because Assertio “is alleged to be part of the oversupply and diversion of opioid prescriptions that is at the

very heart of conspiracy.” Doc. 3555 at 8, n.9. But Plaintiffs’ offer the Court no explanation for the glaring disconnect between their unfounded allegation that Assertio was part of an industry-wide conspiracy and the undisputed fact that Assertio was not even in the opioid business at the time the NAS Children were born. Not only is it illogical that Assertio would have participated in an alleged conspiracy that caused injury to the NAS Children who were born *before* Assertio began marketing any opioid product, but there is no allegation in any of Plaintiffs’ operative complaints that Assertio joined any alleged conspiracy before it began marketing its only two opioid products.

Plaintiffs’ alternative request to add an additional class representative should be denied. *See id.* Plaintiffs have amended each of the operative complaints multiple times and have had ample opportunity to add appropriate class representatives.¹ Yet, Plaintiffs did not even bother to respond to Assertio’s meritorious standing argument, *see* Doc. 3522 at 3-5, and they have failed to produce a shred of evidence showing that Assertio had any connection with any of Plaintiffs’ claims. In the end, shuttling class representatives in and out does not cure the fatal defect in Plaintiffs’ effort to make Assertio part of any proper class action.

Assertio also adopts the arguments set forth in Defendants’ Surreply in Opposition to the NAS Plaintiffs’ Motion for Class Certification. *See* Doc. 3563-1.

For the reasons set forth herein and in Assertio’s opposition to Plaintiffs’ motion for class certification, Assertio respectfully asks that the Court deny certification of any class against Assertio and award any and all other relief to which Assertio may be entitled.

¹ Plaintiffs have known since at least May 8, 2020 when Assertio sought leave to file motions for summary judgment that none of the proposed class representatives has a claim against Assertio. *See* Case No. 1:19-op-45459, Docs. 8, 9 (N.D. Ohio); Case No. 1:18-op-46327, Docs. 42, 43 (N.D. Ohio).

Date: November 25, 2020

Respectfully submitted,

BAKER BOTTS L.L.P.

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CERTIFICATE OF SERVICE

I certify that I caused a true and correct copy of the foregoing document to be electronically filed on November 25, 2020, which will send notification of such filing through the Court's CM/ECF system to all counsel of record.

/s/ Kevin M. Sadler

Kevin M. Sadler